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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 250/2014

COMMISSIONER OF INCOME TAX DELHI-VI ..... Appellant

versus

KAVITA GUPTA ..... Respondent

ITA 337/2014

COMMISSIONER OF INCOME TAX DELHI-VII ..... Appellant

versus

KAVITA GUPTA ..... Respondent

Present: Mr. Rohit Madan, Sr. Standing Counsel with Mr. Ruchir Bhatia, Jr. Standing Counsel and Mr. Akash Vajpai, Advocate, on behalf of Revenue in both matters.

Mr. Satyen Sethi with Mr. Arta Tarana Panda, Advocates for assessee in both matters.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

**20.01.2015**

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1. The Revenue urges that the findings of the Income Tax Appellate Tribunal (ITAT) in these cases, to the extent of deletion of two sums, i.e., ₹15,26,000/- and of ₹31,65,000/- (for AY 2005-06) was unjustified.

2. The facts are that the assessee engages in property related transactions. During the course of business, she enters into agreements to purchase properties and advances amounts for the



purpose. After a while, upon appreciation of property or its value, the assessee either sells those assets or the rights thereto. The resultant income is loss or profits as the case may be and appropriate expenditure claimed. In both the cases as well as for AY 2006-07 (which had been decided in previous appeal ITA 251/2014), the Revenue sought to reopen the assessment and issued notices under Section 147/148. In each of these matters which ultimately was decided by the ITAT, the reopening was held to be not justified and in accordance with law. The Revenue's appeal in 2005-06 was on the issue of reopening of assessment. In that appeal (ITA 251/2014) this Court noted the contentions of the parties in respect of AY 2006-07 and was of the opinion that the reasoning of the ITAT was sound and did not require interference.

3. It is contended by the Revenue that the deletion directed of the two amounts was not based on any reasons. Learned counsel highlighted the fact that the CIT (A) sought for a remand report and after noticing the materials made available by the AO was of the opinion that in the absence of proper co-relation of the transactions and the amounts received, the amounts could not have been added in the circumstances of the case. The ITAT affirmed those findings after going through the same materials.

4. We have heard the counsel for the parties. The record indicates that both the CIT (A) and ITAT no doubt had the benefit of details in the form of charts showing the flow of money and various transactions. However, as to the availability of sum of ₹31,65,000/- or any other amount at any particular time in relation to concerned



assessment years, there had to be necessarily a closer analysis of the transactions. The AO apparently did not do a proper calculation exercise and did not co-relate the transactions. It was also open to the ITAT in these circumstances to have called for a fresh look in the matter rather than set aside the entire addition. Quite possibly, some amounts if not the entire sum, might have been added back. In these circumstances, the impugned order of the ITAT to the extent it directed deletion of the sum of ₹31,65,000/- is hereby set aside. However, the addition of the modified amount (from out of the original sum of ₹15,26,000/-) by the ITAT i.e. by appropriate modification of ₹11 lakhs is hereby sustained.

5. In the circumstances of the case, the matter is remitted for reconsideration of the AO in respect of AY 2005-06. So far as the ITA 337/2014 (for AY 2007-08) is concerned, it is noticed that there are no findings on the merits of the revenue's appeal. The ITAT shall consider the submissions of the parties and go through the materials on record and render its findings in accordance with law. If need be, the ITAT may seek an appropriate remand for its assistance from the AO, for a fuller appreciation of facts.

6. The appeals are partly allowed to the above extent and the impugned orders are hereby set side, in the above terms.

S. RAVINDRA BHAT, J

V. KAMESWAR RAO, J

JANUARY 20, 2015/vikas/